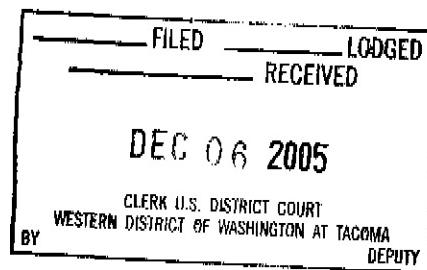




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2 04-CV-05803-ORD
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14 UNITED STATES DISTRICT COURT
15 WESTERN DISTRICT OF WASHINGTON
16 AT TACOMA

17 ANNETTE BAKAY and RICHARD
18 BAKAY, wife and husband,

19 Plaintiffs,

20 v.

21 LAURIE A. YARNES, in her individual and
22 official capacity as CLALLAM COUNTY
23 ANIMAL CONTROL OFFICER; LAURIE
24 A. YARNES and TODD A. YARNES, a
marital community; TRACEY KELLAS, in
her individual and official capacity as
CLALLAM COUNTY ANIMAL
CONTROL OFFICER, and RANDOLPH J.
KELLAS, husband and wife, a marital
community; CLALLAM COUNTY ex rel.
CLALLAM COUNTY SHERIFF'S OFFICE
and CLALLAM COUNTY ANIMAL
CONTROL, a Washington municipal
corporation; CHARLES B. SCHRAMM, in
his individual and official capacity as
PRESIDENT OF HUMANE SOCIETY OF
CLALLAM COUNTY (UBI 601-141-356), a
Washington nonprofit corporation;
CHARLES B. SCHIRAMM and JANE DOE
SCHRAMM, a marital community;
HUMANE SOCIETY OF CLALLAM
COUNTY (UBI 601-141-356), a Washington
nonprofit corporation; TEV BARROS,
D.V.M. (vt6853), individually; TEV M.
BARROS and JANE DOE BARROS, a
marital community; and DOES 1-10,

25 Defendants.

26 Case No. C04-5803RJB

ORDER DENYING PLAINTIFFS'
MOTION TO FILE RESPONSE TO
DEFENDANTS' REQUEST TO
STRIKE MATERIALS

1 This matter comes before the Court on Plaintiffs' motion (Dkt. 175) to file three
2 overlength responses to Defendants' three requests to strike materials. On November 1, 2005,
3 Defendants filed three motions for summary judgment. Dkts. 113, 116, and 118. On
4 November 28, 2005, Plaintiffs filed three responses to the motions for summary judgment.
5 Dkts. 130, 128, and 133. On December 2, 2005, Defendants filed three replies to the motions
6 for summary judgment. Dkts. 158, 163, and 173. In the three replies, Defendants requested
7 that the Court strike materials in Plaintiffs' responses.

8 In this motion, Plaintiffs now seek permission to file three new briefs in opposition to
9 Defendants' three requests to strike materials. Plaintiffs also seek permission to make each
10 brief 10 pages in length, exclusive of exhibits. The Court has considered Plaintiffs' pleadings
11 filed in this matter and the file herein.

12 Requests to strike material contained in a motion or brief are governed by Local Rule
13 7(g), which states:

14 Requests to strike material contained in or attached to submissions of opposing
15 parties shall not be presented in a separate motion to strike, but shall instead be
16 included in the responsive brief, and will be considered with the underlying
17 motion. **The single exception to this rule is for requests to strike material
18 contained in or attached to a reply brief, in which case the opposing party
19 may file a surreply requesting that the court strike the material, subject to
20 the following:**

21 (1) That party must notify all parties ... and the assigned judge's chambers ... as
22 soon after receiving the reply brief as practicable that a surreply will be filed.

23 (2) The surreply must be filed within five judicial days of the filing of the reply
24 brief, and shall be strictly limited to addressing the request to strike.

25 (3) The surreply shall not exceed three pages.

26 (4) **No response shall be filed unless requested by the court.**

27 (Emphasis added).

28 This rule is difficult to understand and requires care when reading. The second sentence
29 of the rule appears, at first glance, to authorize a party to file a surreply *opposing* a request to
30 strike materials that has already been filed. This, however, is not the rule. As noted in

1 subsection four, the rule only allows a party to file a response (of any kind) to a request to strike
2 materials when *requested* by the Court. Further, the only time a surreply is authorized is when
3 a party seeks to strike materials that *appear in a reply*, and must therefore file a surreply in
4 order to make the request to strike.

5 In this instance, Defendants requested in their reply to each motion for summary
6 judgment to strike materials that appear in Plaintiffs' response to each motion for summary
7 judgment. As such, the rule does not allow Plaintiffs to file a surreply—or any other form of
8 brief—that opposes Defendants' request to strike, unless requested by the Court under subsection
9 four. The Court has not made such a request.

10 The Court has been adequately briefed by the parties regarding Defendants' request to
11 strike the materials which appear in Plaintiffs' response, and the Court does not require
12 Plaintiffs to file a brief opposing this matter at this time. Therefore, Plaintiffs' motion to file a
13 response to Defendants' request to strike materials should be denied.

14 ORDER

15 Therefore, it is hereby

16 **ORDERED** that Plaintiffs' motion to file a response to Defendants' request to strike
17 materials (Dkt. 175) is **DENIED**.

18 The Clerk of the Court is instructed to send uncertified copies of this Order to all
19 counsel of record and to any party appearing pro se at said party's last known address.

20 DATED this day of 6 December, 2005.

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26 Robert J. Bryan

United States District Judge